

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

<p>NORTHEAST CONTROLS, INC., 3 Enterprise Avenue Clifton Park New York, NY 12065</p> <p>ST. PAUL MERCURY INSURANCE COMPANY 385 Washington Street St. Paul, MN 55102</p> <p>Plaintiffs,</p> <p>v.</p> <p>FISHER CONTROLS INTERNATIONAL, LLC 205 S. Center Street Marshalltown, Iowa 50158</p> <p>Defendant.</p>	<p>C.A. No.: 06-412 SLR</p> <p>DEFENDANT’S MOTION TO COMPEL DEPOSITIONS OF MICHAEL PETERS AND ALBERT CAPPELLINI</p>
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In accordance with Fed. R. Civ. P. 37(a), defendant Fisher Controls International, LLC hereby moves this Court for an order (1) compelling plaintiffs to produce for deposition Albert Cappellini and Michael Peters and (2) ordering plaintiffs and/or plaintiffs’ counsel to pay Fisher its costs in bringing this Motion, including reasonable attorneys’ fees.

In support of this Motion, Fisher alleges as follows:

1. Fisher duly noted the depositions of Northeast Controls employees Michael Peters and Albert Cappellini and worked with plaintiff’s counsel to schedule those depositions at a time and place convenient to the witnesses.

2. In a letter dated August 16, 2007, plaintiffs' counsel suddenly changed course and informed Fisher that plaintiffs would not produce those witnesses for depositions.

3. Plaintiffs have not provided an adequate reason for their position. Plaintiffs apparently refuse to produce these witnesses because Fisher has filed a motion to amend its counterclaim. The pendency of that motion is irrelevant to the question whether the witnesses should be deposed. Plaintiffs' own claims rest on the testimony of Mr. Peters (president of Northeast Controls). Further, this case arose out of an order processed by Northeast Controls. Mr. Cappellini, an employee of Northeast Controls, was deeply involved in Northeast Controls' handling of that order. Regardless whether the Court grants Fisher's motion to amend its counterclaim, the testimony of Peters and Cappellini is central to the claims and defenses in this action. Given the importance of their testimony, plaintiffs should be compelled to produce them for deposition.

4. Counsel for Fisher made a good-faith attempt to resolve this issue before bringing this Motion to Compel. Counsel for plaintiffs has refused to provide a timely response to Fisher's requests that this issue be resolved and the witnesses produced.

5. Fisher therefore respectfully requests that the Court enter an order (1) compelling plaintiffs to produce Messrs. Peters and Cappellini for deposition at a time and place of Fisher's choosing (within reason) and (2) ordering plaintiffs and/or plaintiffs' counsel to pay Fisher's costs incurred in bringing this Motion, including reasonable attorneys' fees.

6. In support of this Motion, Fisher offers the Memorandum of Law, the Affidavit of Daniel J. Gunter filed in support of Defendant's Motion to Amend Counterclaim, and the Affidavit of Daniel J. Gunter filed concurrently with this Motion.

**MARON MARVEL BRADLEY
& ANDERSON, P.A.**

/s/ Paul A. Bradley

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OF COUNSEL

RIDDELL WILLIAMS P.S.

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Daniel J. Gunter, Esquire

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Suite 4500

Seattle, WA 98154

Date: August 24, 2007

CERTIFICATE OF SERVICE

I, Paul A. Bradley, Esquire, hereby certify that, on August 24, 2007, I caused a true and correct copy of the Defendant's Motion to Compel Depositions of Michael Peters and Albert Cappellini to be served upon counsel of record via electronic filing.

**MARON MARVEL BRADLEY
& ANDERSON, P.A.**

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Pursuant to Rule 7.1.2, Fisher Controls International LLC hereby gives notice that it waives its right to file an opening brief in relation to Defendant's Motion to Compel Depositions of Michael Peters and Albert Cappellini and relies on the contents of it is Motion..

**MARON MARVEL BRADLEY
& ANDERSON, P.A.**

/s/ Paul A. Bradley

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ORDER

Defendant's Motion to Compel the depositions of Albert Cappellini and Michael Peters is hereby granted. Plaintiff shall produce the deponents at a time and place convenient to defendant.

The Honorable Sue L. Robinson